



Rep. Arthur L. Turner

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1 AMENDMENT TO HOUSE BILL 765

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 765, AS AMENDED, by  
3 replacing the preamble with the following:

4 "WHEREAS, Post-conviction review of credible claims,  
5 supported by verifiable evidence, of torture by former Chicago  
6 Police Commander Jon Burge and/or officers under his  
7 supervision should be addressed expeditiously to ensure the  
8 victims of torture receive justice; and

9 WHEREAS, More than 100 African-American men and women were  
10 victims of systematic torture committed by several Chicago  
11 Police officers under the Supervision of former Police  
12 Commander Jon Burge over a two-decade period, from as early  
13 1970 to 1992 and later; and

14 WHEREAS, The incarceration of an innocent victim of torture  
15 not only works an injustice against that individual, but also

1 harms society in that the real perpetrator of a crime remains  
2 free and able to commit additional criminal acts; and

3 WHEREAS, Wrongful convictions result in an erosion of  
4 public confidence in the judicial systems; and

5 WHEREAS, May 19, 2006, The United Nations Committee Against  
6 Torture when issuing its Conclusions and Recommendations with  
7 respect to the US Government's compliance with the Convention  
8 Against Torture and Other Cruel, Inhuman, Degrading Treatment  
9 and Punishment cited the limited investigation and lack of  
10 prosecution in the Chicago Police torture cases and called on  
11 the US Government to thoroughly and impartially investigate all  
12 allegations of acts of torture or cruel, inhuman or degrading  
13 treatment or punishment in these cases; and

14 WHEREAS, Between 1973-1981 - numerous other  
15 African-American arrestees were tortured with electric-shock  
16 and suffocation at Area 2 by Burge and his cohorts to obtain  
17 confessions. The torture included, plastic bags placed over  
18 arrestees heads until lose of consciousness; electric shock  
19 with dark box referred to as "nigger box", to testicles,  
20 armpits, ears, Russian roulette; beatings with guns, fists, and  
21 flashlights; repeated racial epithets; cattle prods; and  
22 cigarette burns; and

1           WHEREAS, 1981-1988 - 55 separate victims allege torture at  
2 Area 2, including Madison Hobley, Leroy Orange, Stanley Howard,  
3 Darrell Cannon, and Aaron Patterson. In most of these cases,  
4 the State's Attorney's Office is aware of the allegations, and  
5 nonetheless uses the coerced evidence to send the victims to  
6 prison; and

7           WHEREAS, January 28, 1991 - Amnesty International issued a  
8 report calling for an inquiry into allegations of police  
9 torture in Chicago. Mayor Daley had "no comment whatsoever".  
10 September 1991 - a thirteen year old boy alleged that he had  
11 been tortured with electric shock at Area three. Burge and  
12 former Sergeant John Byrne allegedly supervised the  
13 interrogation; and

14           WHEREAS, January 1992 - During proceedings before the  
15 Police Board, City lawyers admitted that the evidence of Area 2  
16 torture established "an astounding pattern or plan. . . to  
17 torture certain suspects. . . into confessing to crimes or to  
18 condone such activity"; and

19           WHEREAS, February 7, 1992 - the Office of Professional  
20 Standards publicly released its Torture reports after being  
21 ordered to do so by a federal judge, and in the Goldston Report  
22 the agency found the abuse was "systematic", it included acts  
23 of torture" and that "[p]articular command members were aware

1 of the systematic abuse and participated in it either by  
2 actively participating in same or failing to take any action to  
3 bring it to an end"; and

4 WHEREAS, February-March 1992 - City administratively  
5 prosecuted Burge, Yucaitis, and O'Hara in a 6 week hearing  
6 before the Police Board for the torture of Andrew Wilson; and

7 WHEREAS, February 11, 1993 - The Chicago Police Board fired  
8 Jon Burge and suspended John Yucaitis for 15 months on charges  
9 of torturing and physically abusing Andrew Wilson. O'Hara was  
10 completely exonerated; and

11 WHEREAS, 1993 - The OPS reopened investigations into  
12 approximately 10 of the 60 known victims of police torture.  
13 These cases include Cannon and Howard; and

14 WHEREAS, 1993-1994 - After exhaustive investigations, OPS  
15 investigators complete detailed reports, sustaining torture  
16 allegations in 6 cases, including Cannon and Howard, against  
17 several of Burge's trusted Area 2 associates, including Sgt.  
18 Byrne and Detective Dignan; and

19 WHEREAS, May 15, 1995 - City of Chicago admitted that  
20 Melvin Jones had been electrically shocked in an attempt to  
21 extract a confession; and

1           WHEREAS, July 13, 1995 - City of Chicago admits in a legal  
2 document that Andrew Wilson was tortured by Burge; and

3           WHEREAS, November 1, 1999 - At Cannon's hearing, Dr. Robert  
4 Kirschner, an internationally respected expert on torture and  
5 human rights violations, testified that Cannon and several  
6 other Area 2 victims were tortured and that this torture was  
7 part of a pattern and practice similar to that found in other  
8 countries where official torture is practiced by their military  
9 and law enforcement agencies; and

10           WHEREAS, 1999 - Federal Judge Milton Shadur found that "it  
11 is now common knowledge that Jon Burge and many officers  
12 working under him regularly engaged in the physical abuse and  
13 torture of prisoners in order to extract confessions"; and

14           WHEREAS, August 2000 - Illinois Supreme Court recognized  
15 the importance of the newly discovered evidence of torture, and  
16 ordered that Aaron Patterson, Stanley Howard, and 2 other death  
17 row inmates be afforded hearings on their allegations of  
18 torture; and

19           WHEREAS, April 2002 - Chief Cook County Criminal Court  
20 Judge Paul Biebel found that Cook County State's Attorney  
21 Richard Devine had a conflict arising from his prior

1 representation of Burge and other Area Two Detectives while in  
2 private practice, and appointed Retired Judge Edward Egan as  
3 Special Prosecutor to investigate Area 2 torture; and

4 WHEREAS, January 10, 2003 - Governor George Ryan granted  
5 Madison Hobley, Stanley Howard, Aaron Patterson, and Leroy  
6 Orange pardons on the basis of innocence, while determining  
7 that their confessions were tortured from them by Burge and his  
8 men; and

9 WHEREAS, 2004 - During the course of the civil litigation  
10 and in furtherance of the code of silence, Burge, Byrne, and  
11 more than 30 other Area 2 detectives and supervisors asserted  
12 their Fifth Amendment right not to incriminate themselves and  
13 refused to answer questions on each and every allegation of  
14 torture; and

15 WHEREAS, 2004 - Several African-American former Area 2  
16 detectives who worked under Burge come forward and broke the  
17 code of silence, admitting that they saw or heard evidence of  
18 torture, saw implements of torture, including Burge's shock  
19 box, and that torture by Burge and his men was an "open secret"  
20 at Area 2; and

21 WHEREAS, January 2005 - United States Court of Appeals  
22 Justice Diane Wood likened Area 2 torture to that of Abu

1 Ghraib, writing: "[A] mountain of evidence indicates that  
2 torture was an ordinary occurrence at the Area 2 station of the  
3 Chicago Police Department. Eventually, as this sorry tale came  
4 to light, the Office of Professional Standards Investigation of  
5 the Police Department looked into the allegations, and it  
6 issued a report that concluded that police torture under the  
7 command of Lt. Jon Burge - the officer in charge of Hinton's  
8 case - had been a regular part of the system for more than ten  
9 years. And, in language reminiscent of the news reports of 2004  
10 concerning the notorious Abu Ghraib facility in Iraq, the  
11 report said that: [t]he type of abuse described was not limited  
12 to the usual beating, but went into such esoteric areas as  
13 psychological techniques and planned torture"; and

14 WHEREAS, January 2005 - Justice Wood further found that  
15 Area Two torture violated the United Nations prohibition  
16 against torture, writing: Indeed, the alleged conduct is so  
17 extreme that, if proven, it would fall within the prohibitions  
18 established by the United Nations Convention Against Torture  
19 ("CAT"), which defines torture as "any act by which severe pain  
20 or suffering, whether physical or mental, is intentionally  
21 inflicted on a person for such purposes as obtaining from him  
22 or a third person information or a confession. . . ." thereby  
23 violating the fundamental human rights principles that the  
24 United States is committed to uphold. . . .; and

1           WHEREAS, Spring 2005 - Freedom of information documents  
2 reveal that the City of Chicago has spent more than \$6,000,000  
3 in legal fees defending itself and Burge and his men against  
4 allegations of torture, despite repeatedly acknowledging that  
5 they had engaged in a pattern and practice of torture; and

6           WHEREAS, September 1, 2005 - Frustrated by the fact that  
7 the Special Prosecutor had not brought indictments, community  
8 groups petitioned the Organization of American States'  
9 Inter-American Commission on Human Rights and was granted a  
10 hearing on police torture and the failure to prosecute Burge  
11 and his men; and

12           WHEREAS, On July 19, 2006, the Special Prosecutors filed a  
13 292-page report documenting their investigation, which took  
14 four years to complete at a cost to taxpayers of \$7,000,000,  
15 and although they claimed Burge and others could not be  
16 criminally prosecuted due to the state statute of limitations,  
17 and they concluded:

18           "Beyond a reasonable doubt," Jon Burge and five other  
19 detectives under his command committed criminal acts in  
20 violation of the laws of the State of Illinois which  
21 included armed violence, aggravated battery, intimidation,  
22 official misconduct, perjury, and/or obstruction of  
23 justice against three African American male torture  
24 victims, Andrew Wilson, Alphonso Pinex and Phillip Adkins;

1 and

2 Many other African American victims were abused by  
3 Burge including Melvin Jones, Shaded Mumin and Michael  
4 Johnson, but "proof beyond a reasonable doubt [was]  
5 absent"; and

6 Of the 148 cases they investigated, they believed that  
7 abuse occurred in 74, or approximately half of the cases;  
8 and

9 Jon Burge was guilty of abusing people with impunity  
10 and therefore those serving under his command believed they  
11 too could abuse people with impunity; and

12 Eight to twelve detectives (out a police unit of  
13 forty-four) were responsible for the majority of the  
14 torture; and

15 The former Superintendent of the Chicago Police  
16 Department (hereinafter CPD) Richard J. Brzeczek was  
17 guilty of a "dereliction of duty" and "did not act in good  
18 faith in the investigation of Andrew Wilson's case"  
19 because: 1) Brzeczek "believed at the time that officers at  
20 Area 2 had tortured Andrew Wilson," yet Brzeczek "kept  
21 Burge in command at Area 2, and issued a letter of  
22 commendation to all of the detectives at Area 2;" and 2)  
23 Brzeczek was aware CPD officers falsely testified under  
24 oath at a motion to suppress Wilson's coerced confession  
25 and before a jury in Wilson's criminal trial, denying  
26 Wilson had been tortured, in order to use his coerced

1 confession to convict him and sentence him to death; and

2 The Chief of Felony Review of the Cook County State's  
3 Attorney's Office, Lawrence Hyman, who interviewed Andrew  
4 Wilson after he was tortured at Police Headquarters, gave  
5 "false testimony" in Andrew Wilson's criminal proceedings  
6 when "he denied that Andrew Wilson told him he had been  
7 tortured by detectives under the command of Jon Burge;" and

8 Something should have been done about the disgrace and  
9 embarrassment [at Area 2] 24 years ago by the Chicago  
10 Police Superintendent"; and

11 WHEREAS, The 100 or more torture victims were forced to  
12 confess to crimes and the forced confessions were used to  
13 convict them; and

14 WHEREAS, At least 24 victims of torture are still  
15 imprisoned in Illinois prisons and these victims no longer have  
16 recourse through the courts; and

17 WHEREAS, Public confidence in the justice system is  
18 strengthened by thorough and timely inquiry into claims of  
19 torture; and

20 WHEREAS, Factual claims of torture, which are determined to  
21 be credible, can most effectively and efficiently be evaluated  
22 through complete and independent investigation and review of

1 the same; therefore"; and

2 by replacing everything after the enacting clause with the  
3 following:

4 "Section 1. Short title. This Act may be cited as the  
5 Illinois Torture Inquiry and Relief Commission Act.

6 Section 5. Definitions. As used in this Act:

7 (1) "Claim of torture" means a claim on behalf of a living  
8 person convicted of a felony in Illinois asserting that he was  
9 tortured into confessing to the crime for which the person was  
10 convicted and the tortured confession was used to obtain the  
11 conviction and for which there is some credible evidence  
12 related to allegations of torture committed by Commander Jon  
13 Burge or any officer under the supervision of Jon Burge.

14 (2) "Commission" means the Illinois Torture Inquiry and  
15 Relief Commission established by this Act.

16 (3) "Director" means the Director of the Illinois Torture  
17 Inquiry and Relief Commission.

18 (4) "Victim" means the victim of the crime, or if the  
19 victim of the crime is deceased, the next of kin of the victim.

20 Section 10. Purpose of Act. This Act establishes an  
21 extraordinary procedure to investigate and determine factual  
22 claims of torture related to allegations of torture that shall

1 require an individual to voluntarily waive rights and  
2 privileges as described in this Act.

3 Section 15. Commission established.

4 (a) There is established the Illinois Torture and Relief  
5 Inquiry Commission. The Illinois Torture Relief Inquiry  
6 Commission shall be an independent commission under the  
7 Administrative Office of the Illinois Courts for  
8 administrative purposes.

9 (b) The Administrative Office of the Illinois Courts shall  
10 provide administrative support to the Commission as needed. The  
11 Director of the Administrative Office of the Illinois Courts  
12 shall not reduce or modify the budget of the Commission or use  
13 funds appropriated to the Commission without the approval of  
14 the Commission.

15 Section 20. Membership; chair; meetings; quorum.

16 (a) The Commission shall consist of 8 voting members as  
17 follows:

18 (1) One shall be a Circuit Court Judge, with 10 years  
19 or less seniority.

20 (2) One shall be a former prosecuting attorney.

21 (3) One shall be a law school professor.

22 (4) One shall be engaged in the practice of criminal  
23 defense law.

24 (5) Three shall be members of the public who are not

1 attorneys and who are not officers or employees of the  
2 Judicial branch.

3 (6) One shall be a former public defender.

4 The Commission shall be appointed as follows:

5 2 members appointed by the Governor;

6 2 members appointed by the President of the Senate;

7 One member appointed by the Minority Leader of the  
8 Senate;

9 2 members appointed by the Speaker of the House of  
10 Representatives; and

11 One member appointed by the Minority Leader of the  
12 House of Representatives.

13 After an appointee has served his or her first 3-year term,  
14 the subsequent appointment or reappointment may be by the  
15 initial appointing authority.

16 (a-1) The appointing authority shall also appoint  
17 alternate Commission members for the Commission members he or  
18 she has appointed to serve in the event of scheduling  
19 conflicts, conflicts of interest, disability, or other  
20 disqualification arising in a particular case. The alternate  
21 members shall have the same qualifications for appointment as  
22 the original member. In making the appointments, the appointing  
23 authority shall make a good faith effort to appoint members  
24 with different perspectives of the justice system. The  
25 appointing authority shall also consider geographical  
26 location, gender, and racial diversity in making the

1 appointments.

2 (b) The judge who is appointed as a member under subsection  
3 (a) shall serve as Chair of the Commission. The Commission  
4 shall have its initial meeting no later than January 31, 2008,  
5 at the call of the Chair. The Commission shall meet a minimum  
6 of once every 6 months and may also meet more often at the call  
7 of the Chair. The Commission shall meet at such time and place  
8 as designated by the Chair. Notice of the meetings shall be  
9 given at such time and manner as provided by the rules of the  
10 Commission. A majority of the members shall constitute a  
11 quorum. All Commission votes shall be by majority vote.

12 Section 25. Terms of members; compensation; expenses.

13 (a) Of the initial members, 2 appointments shall be for  
14 one-year terms, 3 appointments shall be for 2-year terms, and 3  
15 appointments shall be for 3-year terms. Thereafter, all terms  
16 shall be for 3 years. Members of the Commission shall serve no  
17 more than 2 consecutive 3-year terms plus any initial term of  
18 less than 3 years. Unless provided otherwise by this Act, all  
19 terms of members shall begin on January 1 and end on December  
20 31.

21 Members serving by virtue of elective or appointive office,  
22 may serve only so long as the office holders hold those  
23 respective offices. The Chief Judge of the Cook County Circuit  
24 Court may remove members, with cause. Vacancies occurring  
25 before the expiration of a term shall be filled in the manner

1 provided for the members first appointed.

2 (b) The Commission members shall receive no salary for  
3 serving. All Commission members shall receive necessary  
4 subsistence and travel expenses.

5 Section 30. Director and other staff. The Commission shall  
6 employ a Director. The Director shall be an attorney licensed  
7 to practice in Illinois at the time of appointment and at all  
8 times during service as Director. The Director shall assist the  
9 Commission in developing rules and standards for cases accepted  
10 for review, coordinate investigation of cases accepted for  
11 review, maintain records for all cases investigations, prepare  
12 reports outlining Commission investigations and  
13 recommendations to the trial court, and apply for and accept on  
14 behalf of the Commission any funds that may become available  
15 from government grants, private gifts, donations, or bequests  
16 from any source.

17 Subject to the approval of the Chair, the Director shall  
18 employ such other staff and shall contract for services as is  
19 necessary to assist the Commission in the performance of its  
20 duties, and as funds permit.

21 The Commission may meet in an area provided by the  
22 Administrative Office of the Illinois Courts. The  
23 Administrative Office of the Illinois Courts shall provide  
24 office space for the Commission and the Commission staff.

1           Section 35. Duties. The Commission shall have the following  
2 duties and powers:

3           (1) To establish the criteria and screening process to  
4 be used to determine which cases shall be accepted for  
5 review.

6           (2) To conduct inquiries into claims of torture with  
7 priority to be given to those cases in which the convicted  
8 person is currently incarcerated solely for the crime to  
9 which he or she claims torture by Jon Burge and - or  
10 officers under his command.

11           (3) To coordinate the investigation of cases accepted  
12 for review.

13           (4) To maintain records for all case investigations.

14           (5) To prepare written reports outlining Commission  
15 investigations and recommendations to the trial court at  
16 the completion of each inquiry.

17           (6) To apply for and accept any funds that may become  
18 available for the Commission's work from government  
19 grants, private gifts, donations, or bequests from any  
20 source.

21           Section 40. Claims of torture; waiver of convicted person's  
22 procedural safeguards and privileges; formal inquiry;  
23 notification of the crime victim.

24           (a) A claim of torture may be referred to the Commission by  
25 any court, person, or agency. The Commission shall not consider

1 a claim of torture if the convicted person is deceased. The  
2 determination of whether to grant a formal inquiry regarding  
3 any other claim of torture is in the discretion of the  
4 Commission. The Commission may informally screen and dismiss a  
5 case summarily at its discretion.

6 (b) No formal inquiry into a claim of torture shall be made  
7 by the Commission unless the Director or the Director's  
8 designee first obtains a signed agreement from the convicted  
9 person in which the convicted person waives his or her  
10 procedural safeguard and privileges, agrees to cooperate with  
11 the Commission, and agrees to provide full disclosure regarding  
12 inquiry requirements of the Commission. The Waiver under this  
13 subsection does not apply to matters unrelated to a convicted  
14 person's claim of torture. The convicted person shall have the  
15 right to advice of counsel prior to the execution of the  
16 agreement and, if a formal inquiry is granted, throughout the  
17 formal inquiry. If counsel represents the convicted person,  
18 then the convicted person's counsel must be present at the  
19 signing of the agreement. If counsel does not represent the  
20 convicted person, the Commission Chair shall determine the  
21 convicted person's indigency status and, if appropriate, enter  
22 an order for the appointment of counsel for the purpose of  
23 advising on the agreement.

24 (c) If a formal inquiry regarding a claim of torture is  
25 granted, the Director shall use all due diligence to notify the  
26 victim in the case and explain the inquiry process. The

1 Commission shall give the victim notice that the victim has the  
2 right to present his or her views and concerns throughout the  
3 Commission's investigation.

4 (d) The Commission may use any measure provided in the Code  
5 of Civil Procedure and the Code of Criminal Procedure of 1963  
6 to obtain information necessary to its inquiry. The Commission  
7 may also do any of the following: issue process to compel the  
8 attendance of witnesses and the production of evidence,  
9 administer oaths, petition the Circuit Court of Cook County or  
10 of the original jurisdiction for enforcement of process or for  
11 other relief, and prescribe its own rules of procedure. All  
12 challenges with regard to the Commission's authority or the  
13 Commission's access to evidence shall be heard by the  
14 Commission Chair in the Chair's judicial capacity, including  
15 any in camera review.

16 (e) While performing duties for the Commission, the  
17 Director or the Director's designee may serve subpoenas or  
18 other process issued by the Commission throughout the State in  
19 the same manner and with the same effect as an officer  
20 authorized to serve process under the laws of this State.

21 (f) All State discovery and disclosure statutes in effect  
22 at the time of formal inquiry shall be enforceable as if the  
23 convicted person were currently being tried for the charge for  
24 which the convicted person is claiming torture.

25 (g) If, at any point during an inquiry, the convicted  
26 person refuses to comply with requests of the Commission or is

1 otherwise deemed to be uncooperative by the Commission, the  
2 Commission shall discontinue the inquiry.

3 Section 45. Commission proceedings.

4 (a) At the completion of a formal inquiry, all relevant  
5 evidence shall be presented to the full Commission. As part of  
6 its proceedings, the Commission may conduct public hearings.  
7 The determination as to whether to conduct public hearings is  
8 solely in the discretion of the Commission. Any public hearing  
9 held in accordance with this Section shall be subject to the  
10 Commission's rules of operation.

11 (b) The Director shall use all due diligence to notify the  
12 victim at least 30 days prior to any proceedings of the full  
13 Commission held in regard to the victim's case. The Commission  
14 shall notify the victim that the victim is permitted to attend  
15 proceedings otherwise closed to the public, subject to any  
16 limitations imposed by this Act, If the victim plans to attend  
17 proceedings otherwise closed to the public, the victim shall  
18 notify the Commission at least 10 days in advance of the  
19 proceedings of his or her intent to attend. If the Commission  
20 determines that the victim's presence may interfere with the  
21 investigation, the Commission may close any portion of the  
22 proceedings to the victim.

23 (c) After hearing the evidence, the full Commission shall  
24 vote to establish further case disposition as provided by this  
25 subsection. All 8 voting members of the Commission shall

1 participate in that vote.

2 If 5 or more of the 8 voting members of the Commission  
3 conclude there is sufficient evidence of torture to merit  
4 judicial review, the case shall be referred to the Chief Judge  
5 of the Circuit Court of Cook County by filing with the clerk of  
6 court the opinion of the Commission with supporting findings of  
7 fact, as well as the record in support of such opinion, with  
8 service on the State's Attorney if another State's Attorney is  
9 appointed other than Richard Devine in non-capital cases and  
10 service on both the State's Attorney and Attorney General in  
11 capital cases.

12 If less than 5 of the 8 voting members of the Commission  
13 conclude there is insufficient evidence of torture to merit  
14 judicial review, the Commission shall conclude there is  
15 insufficient evidence of torture to merit judicial review. The  
16 Commission shall document that opinion, along with supporting  
17 findings of fact, and file those documents and supporting  
18 materials with the court clerk in the circuit of original  
19 jurisdiction, with a copy to the State's Attorney and the chief  
20 judge.

21 The Director of the Commission shall use all due diligence  
22 to notify immediately the victim of the Commission's conclusion  
23 in a case.

24 (d) Evidence of criminal acts, professional misconduct, or  
25 other wrongdoing disclosed through formal inquiry or  
26 Commission proceedings shall be referred to the appropriate

1 authority. Evidence favorable to the convicted person  
2 disclosed through formal inquiry or Commission proceedings  
3 shall be disclosed to the convicted person and the convicted  
4 person's counsel, if the convicted person has counsel.

5 (e) All proceedings, of the Commission shall be recorded  
6 and transcribed as part of the record. All Commission member  
7 votes shall be recorded in the record. All records and  
8 proceedings of the Commission are confidential and are exempt  
9 from public record and public meeting laws except that the  
10 supporting records for the Commission's conclusion that there  
11 is sufficient evidence of torture to merit judicial review,  
12 including all files and materials considered by the Commission  
13 and an full transcript of the hearing before the Commission,  
14 shall become public at the time of referral to the court.  
15 Commission records for conclusions of insufficient evidence of  
16 torture to merit judicial review shall remain confidential,  
17 except as provided in subsection (d).

18 Section 50. Post-commission judicial review.

19 (a) If the Commission concludes there is sufficient  
20 evidence of torture to merit judicial review, the Chair of the  
21 Commission shall request the Chief Judge of the Circuit Court  
22 of Cook County for assignment to a trial judge for  
23 consideration. The court may receive proof by affidavits,  
24 depositions, oral testimony, or other evidence. In its  
25 discretion the court may order the petitioner brought before

1 the court for the hearing. If the court finds in favor of the  
2 petitioner, it shall enter an appropriate order with respect to  
3 the judgment or sentence in the former proceedings and such  
4 supplementary orders as to rearraignment, retrial, custody,  
5 bail or discharge as may be necessary and proper.

6 (c) The State's Attorney, or the State's Attorney's  
7 designee, shall represent the State at the hearing before the  
8 Assigned judge.

9 Section 55. No right to further review of decision by  
10 Commission; convicted person retains right to other  
11 postconviction relief.

12 (a) Unless otherwise authorized by this Act, the decisions  
13 of the Commission are final and are subject to further review  
14 by appeal, certification, writ, motion, or otherwise.

15 (b) A claim of torture asserted through the Commission  
16 shall not adversely affect the convicted person's rights to  
17 other post conviction relief.

18 Section 60. In order to allow staggered terms of members of  
19 the Illinois Torture Inquiry and Relief Commission, the  
20 Commission members identified in paragraphs (1), (2), and (4)  
21 of subsection (a) of Section 20 shall be appointed to initial  
22 terms of 2 years, the Commission members identified in  
23 paragraph (5) of subsection (a) of Section 20 shall be  
24 appointed to initial terms of 3 years, and the Commission

1 members identified in paragraph (3) and (6) of subsection (a)  
2 of Section 20 shall be appointed to initial terms of one year.

3 Section 65. Beginning January 1, 2009, and annually  
4 thereafter, the Illinois Torture and Inquiry Relief Commission  
5 shall report on its activities to the General Assembly and the  
6 Governor. The report may contain recommendations of any needed  
7 legislative changes related to the activities of the  
8 Commission. The report shall recommend the funding needed by  
9 the Commission, the State's Attorneys, and the Department of  
10 State Police in order to meet their responsibilities under this  
11 Act. Recommendations concerning the State's Attorneys or the  
12 Department of State Police shall only be made after  
13 consultations with the Illinois State's Attorneys Association  
14 and the Attorney General.

15 Section 70. The Administrative Office of the Illinois  
16 Courts shall report to the General Assembly and the Chief  
17 Justice no later than December 31, 2010, and no later than  
18 December 31 of every third year, regarding the implementation  
19 of this Act and shall include in its report the statistics  
20 regarding inquiries and any recommendations for changes. The  
21 House of Representatives and the Senate shall refer the report  
22 to the appropriate committees for their review.

23 Section 75. The initial members of the Illinois Torture

1 Inquiry and Relief Commission shall be appointed not later than  
2 October 1, 2007. No claims of torture may be filed with the  
3 Commission until November 1, 2007.

4 Section 80. This Act applies to claims of torture filed on  
5 or before December 31, 2012.

6 Section 905. The Freedom of Information Act is amended by  
7 changing Section 7 as follows:

8 (5 ILCS 140/7) (from Ch. 116, par. 207)

9 Sec. 7. Exemptions.

10 (1) The following shall be exempt from inspection and  
11 copying:

12 (a) Information specifically prohibited from  
13 disclosure by federal or State law or rules and regulations  
14 adopted under federal or State law.

15 (b) Information that, if disclosed, would constitute a  
16 clearly unwarranted invasion of personal privacy, unless  
17 the disclosure is consented to in writing by the individual  
18 subjects of the information. The disclosure of information  
19 that bears on the public duties of public employees and  
20 officials shall not be considered an invasion of personal  
21 privacy. Information exempted under this subsection (b)  
22 shall include but is not limited to:

23 (i) files and personal information maintained with

1           respect to clients, patients, residents, students or  
2           other individuals receiving social, medical,  
3           educational, vocational, financial, supervisory or  
4           custodial care or services directly or indirectly from  
5           federal agencies or public bodies;

6           (ii) personnel files and personal information  
7           maintained with respect to employees, appointees or  
8           elected officials of any public body or applicants for  
9           those positions;

10          (iii) files and personal information maintained  
11          with respect to any applicant, registrant or licensee  
12          by any public body cooperating with or engaged in  
13          professional or occupational registration, licensure  
14          or discipline;

15          (iv) information required of any taxpayer in  
16          connection with the assessment or collection of any tax  
17          unless disclosure is otherwise required by State  
18          statute;

19          (v) information revealing the identity of persons  
20          who file complaints with or provide information to  
21          administrative, investigative, law enforcement or  
22          penal agencies; provided, however, that identification  
23          of witnesses to traffic accidents, traffic accident  
24          reports, and rescue reports may be provided by agencies  
25          of local government, except in a case for which a  
26          criminal investigation is ongoing, without

1           constituting a clearly unwarranted per se invasion of  
2           personal privacy under this subsection; and

3           (vi) the names, addresses, or other personal  
4           information of participants and registrants in park  
5           district, forest preserve district, and conservation  
6           district programs.

7           (c) Records compiled by any public body for  
8           administrative enforcement proceedings and any law  
9           enforcement or correctional agency for law enforcement  
10          purposes or for internal matters of a public body, but only  
11          to the extent that disclosure would:

12          (i) interfere with pending or actually and  
13          reasonably contemplated law enforcement proceedings  
14          conducted by any law enforcement or correctional  
15          agency;

16          (ii) interfere with pending administrative  
17          enforcement proceedings conducted by any public body;

18          (iii) deprive a person of a fair trial or an  
19          impartial hearing;

20          (iv) unavoidably disclose the identity of a  
21          confidential source or confidential information  
22          furnished only by the confidential source;

23          (v) disclose unique or specialized investigative  
24          techniques other than those generally used and known or  
25          disclose internal documents of correctional agencies  
26          related to detection, observation or investigation of

1 incidents of crime or misconduct;

2 (vi) constitute an invasion of personal privacy  
3 under subsection (b) of this Section;

4 (vii) endanger the life or physical safety of law  
5 enforcement personnel or any other person; or

6 (viii) obstruct an ongoing criminal investigation.

7 (d) Criminal history record information maintained by  
8 State or local criminal justice agencies, except the  
9 following which shall be open for public inspection and  
10 copying:

11 (i) chronologically maintained arrest information,  
12 such as traditional arrest logs or blotters;

13 (ii) the name of a person in the custody of a law  
14 enforcement agency and the charges for which that  
15 person is being held;

16 (iii) court records that are public;

17 (iv) records that are otherwise available under  
18 State or local law; or

19 (v) records in which the requesting party is the  
20 individual identified, except as provided under part  
21 (vii) of paragraph (c) of subsection (1) of this  
22 Section.

23 "Criminal history record information" means data  
24 identifiable to an individual and consisting of  
25 descriptions or notations of arrests, detentions,  
26 indictments, informations, pre-trial proceedings, trials,

1 or other formal events in the criminal justice system or  
2 descriptions or notations of criminal charges (including  
3 criminal violations of local municipal ordinances) and the  
4 nature of any disposition arising therefrom, including  
5 sentencing, court or correctional supervision,  
6 rehabilitation and release. The term does not apply to  
7 statistical records and reports in which individuals are  
8 not identified and from which their identities are not  
9 ascertainable, or to information that is for criminal  
10 investigative or intelligence purposes.

11 (e) Records that relate to or affect the security of  
12 correctional institutions and detention facilities.

13 (f) Preliminary drafts, notes, recommendations,  
14 memoranda and other records in which opinions are  
15 expressed, or policies or actions are formulated, except  
16 that a specific record or relevant portion of a record  
17 shall not be exempt when the record is publicly cited and  
18 identified by the head of the public body. The exemption  
19 provided in this paragraph (f) extends to all those records  
20 of officers and agencies of the General Assembly that  
21 pertain to the preparation of legislative documents.

22 (g) Trade secrets and commercial or financial  
23 information obtained from a person or business where the  
24 trade secrets or information are proprietary, privileged  
25 or confidential, or where disclosure of the trade secrets  
26 or information may cause competitive harm, including:

1           (i) All information determined to be confidential  
2           under Section 4002 of the Technology Advancement and  
3           Development Act.

4           (ii) All trade secrets and commercial or financial  
5           information obtained by a public body, including a  
6           public pension fund, from a private equity fund or a  
7           privately held company within the investment portfolio  
8           of a private equity fund as a result of either  
9           investing or evaluating a potential investment of  
10          public funds in a private equity fund. The exemption  
11          contained in this item does not apply to the aggregate  
12          financial performance information of a private equity  
13          fund, nor to the identity of the fund's managers or  
14          general partners. The exemption contained in this item  
15          does not apply to the identity of a privately held  
16          company within the investment portfolio of a private  
17          equity fund, unless the disclosure of the identity of a  
18          privately held company may cause competitive harm.

19          Nothing contained in this paragraph (g) shall be construed  
20          to prevent a person or business from consenting to disclosure.

21          (h) Proposals and bids for any contract, grant, or  
22          agreement, including information which if it were  
23          disclosed would frustrate procurement or give an advantage  
24          to any person proposing to enter into a contractor  
25          agreement with the body, until an award or final selection  
26          is made. Information prepared by or for the body in

1 preparation of a bid solicitation shall be exempt until an  
2 award or final selection is made.

3 (i) Valuable formulae, computer geographic systems,  
4 designs, drawings and research data obtained or produced by  
5 any public body when disclosure could reasonably be  
6 expected to produce private gain or public loss. The  
7 exemption for "computer geographic systems" provided in  
8 this paragraph (i) does not extend to requests made by news  
9 media as defined in Section 2 of this Act when the  
10 requested information is not otherwise exempt and the only  
11 purpose of the request is to access and disseminate  
12 information regarding the health, safety, welfare, or  
13 legal rights of the general public.

14 (j) Test questions, scoring keys and other examination  
15 data used to administer an academic examination or  
16 determined the qualifications of an applicant for a license  
17 or employment.

18 (k) Architects' plans, engineers' technical  
19 submissions, and other construction related technical  
20 documents for projects not constructed or developed in  
21 whole or in part with public funds and the same for  
22 projects constructed or developed with public funds, but  
23 only to the extent that disclosure would compromise  
24 security, including but not limited to water treatment  
25 facilities, airport facilities, sport stadiums, convention  
26 centers, and all government owned, operated, or occupied

1 buildings.

2 (l) Library circulation and order records identifying  
3 library users with specific materials.

4 (m) Minutes of meetings of public bodies closed to the  
5 public as provided in the Open Meetings Act until the  
6 public body makes the minutes available to the public under  
7 Section 2.06 of the Open Meetings Act.

8 (n) Communications between a public body and an  
9 attorney or auditor representing the public body that would  
10 not be subject to discovery in litigation, and materials  
11 prepared or compiled by or for a public body in  
12 anticipation of a criminal, civil or administrative  
13 proceeding upon the request of an attorney advising the  
14 public body, and materials prepared or compiled with  
15 respect to internal audits of public bodies.

16 (o) Information received by a primary or secondary  
17 school, college or university under its procedures for the  
18 evaluation of faculty members by their academic peers.

19 (p) Administrative or technical information associated  
20 with automated data processing operations, including but  
21 not limited to software, operating protocols, computer  
22 program abstracts, file layouts, source listings, object  
23 modules, load modules, user guides, documentation  
24 pertaining to all logical and physical design of  
25 computerized systems, employee manuals, and any other  
26 information that, if disclosed, would jeopardize the

1 security of the system or its data or the security of  
2 materials exempt under this Section.

3 (q) Documents or materials relating to collective  
4 negotiating matters between public bodies and their  
5 employees or representatives, except that any final  
6 contract or agreement shall be subject to inspection and  
7 copying.

8 (r) Drafts, notes, recommendations and memoranda  
9 pertaining to the financing and marketing transactions of  
10 the public body. The records of ownership, registration,  
11 transfer, and exchange of municipal debt obligations, and  
12 of persons to whom payment with respect to these  
13 obligations is made.

14 (s) The records, documents and information relating to  
15 real estate purchase negotiations until those negotiations  
16 have been completed or otherwise terminated. With regard to  
17 a parcel involved in a pending or actually and reasonably  
18 contemplated eminent domain proceeding under the Eminent  
19 Domain Act, records, documents and information relating to  
20 that parcel shall be exempt except as may be allowed under  
21 discovery rules adopted by the Illinois Supreme Court. The  
22 records, documents and information relating to a real  
23 estate sale shall be exempt until a sale is consummated.

24 (t) Any and all proprietary information and records  
25 related to the operation of an intergovernmental risk  
26 management association or self-insurance pool or jointly

1 self-administered health and accident cooperative or pool.

2 (u) Information concerning a university's adjudication  
3 of student or employee grievance or disciplinary cases, to  
4 the extent that disclosure would reveal the identity of the  
5 student or employee and information concerning any public  
6 body's adjudication of student or employee grievances or  
7 disciplinary cases, except for the final outcome of the  
8 cases.

9 (v) Course materials or research materials used by  
10 faculty members.

11 (w) Information related solely to the internal  
12 personnel rules and practices of a public body.

13 (x) Information contained in or related to  
14 examination, operating, or condition reports prepared by,  
15 on behalf of, or for the use of a public body responsible  
16 for the regulation or supervision of financial  
17 institutions or insurance companies, unless disclosure is  
18 otherwise required by State law.

19 (y) Information the disclosure of which is restricted  
20 under Section 5-108 of the Public Utilities Act.

21 (z) Manuals or instruction to staff that relate to  
22 establishment or collection of liability for any State tax  
23 or that relate to investigations by a public body to  
24 determine violation of any criminal law.

25 (aa) Applications, related documents, and medical  
26 records received by the Experimental Organ Transplantation

1 Procedures Board and any and all documents or other records  
2 prepared by the Experimental Organ Transplantation  
3 Procedures Board or its staff relating to applications it  
4 has received.

5 (bb) Insurance or self insurance (including any  
6 intergovernmental risk management association or self  
7 insurance pool) claims, loss or risk management  
8 information, records, data, advice or communications.

9 (cc) Information and records held by the Department of  
10 Public Health and its authorized representatives relating  
11 to known or suspected cases of sexually transmissible  
12 disease or any information the disclosure of which is  
13 restricted under the Illinois Sexually Transmissible  
14 Disease Control Act.

15 (dd) Information the disclosure of which is exempted  
16 under Section 30 of the Radon Industry Licensing Act.

17 (ee) Firm performance evaluations under Section 55 of  
18 the Architectural, Engineering, and Land Surveying  
19 Qualifications Based Selection Act.

20 (ff) Security portions of system safety program plans,  
21 investigation reports, surveys, schedules, lists, data, or  
22 information compiled, collected, or prepared by or for the  
23 Regional Transportation Authority under Section 2.11 of  
24 the Regional Transportation Authority Act or the St. Clair  
25 County Transit District under the Bi-State Transit Safety  
26 Act.

1           (gg) Information the disclosure of which is restricted  
2 and exempted under Section 50 of the Illinois Prepaid  
3 Tuition Act.

4           (hh) Information the disclosure of which is exempted  
5 under the State Officials and Employees Ethics Act.

6           (ii) Beginning July 1, 1999, information that would  
7 disclose or might lead to the disclosure of secret or  
8 confidential information, codes, algorithms, programs, or  
9 private keys intended to be used to create electronic or  
10 digital signatures under the Electronic Commerce Security  
11 Act.

12           (jj) Information contained in a local emergency energy  
13 plan submitted to a municipality in accordance with a local  
14 emergency energy plan ordinance that is adopted under  
15 Section 11-21.5-5 of the Illinois Municipal Code.

16           (kk) Information and data concerning the distribution  
17 of surcharge moneys collected and remitted by wireless  
18 carriers under the Wireless Emergency Telephone Safety  
19 Act.

20           (ll) Vulnerability assessments, security measures, and  
21 response policies or plans that are designed to identify,  
22 prevent, or respond to potential attacks upon a community's  
23 population or systems, facilities, or installations, the  
24 destruction or contamination of which would constitute a  
25 clear and present danger to the health or safety of the  
26 community, but only to the extent that disclosure could

1 reasonably be expected to jeopardize the effectiveness of  
2 the measures or the safety of the personnel who implement  
3 them or the public. Information exempt under this item may  
4 include such things as details pertaining to the  
5 mobilization or deployment of personnel or equipment, to  
6 the operation of communication systems or protocols, or to  
7 tactical operations.

8 (mm) Maps and other records regarding the location or  
9 security of a utility's generation, transmission,  
10 distribution, storage, gathering, treatment, or switching  
11 facilities.

12 (nn) Law enforcement officer identification  
13 information or driver identification information compiled  
14 by a law enforcement agency or the Department of  
15 Transportation under Section 11-212 of the Illinois  
16 Vehicle Code.

17 (oo) Records and information provided to a residential  
18 health care facility resident sexual assault and death  
19 review team or the Executive Council under the Abuse  
20 Prevention Review Team Act.

21 (pp) Information provided to the predatory lending  
22 database created pursuant to Article 3 of the Residential  
23 Real Property Disclosure Act, except to the extent  
24 authorized under that Article.

25 (qq) Defense budgets and petitions for certification  
26 of compensation and expenses for court appointed trial

1           counsel as provided under Sections 10 and 15 of the Capital  
2           Crimes Litigation Act. This subsection (qq) shall apply  
3           until the conclusion of the trial of the case, even if the  
4           prosecution chooses not to pursue the death penalty prior  
5           to trial or sentencing.

6           (rr) Records of investigations conducted by the  
7           Illinois Torture Inquiry and Relief Commission.

8           (2) This Section does not authorize withholding of  
9           information or limit the availability of records to the public,  
10          except as stated in this Section or otherwise provided in this  
11          Act.

12          (Source: P.A. 93-43, eff. 7-1-03; 93-209, eff. 7-18-03; 93-237,  
13          eff. 7-22-03; 93-325, eff. 7-23-03, 93-422, eff. 8-5-03;  
14          93-577, eff. 8-21-03; 93-617, eff. 12-9-03; 94-280, eff.  
15          1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; 94-931, eff.  
16          6-26-06; 94-953, eff. 6-27-06; 94-1055, eff. 1-1-07; revised  
17          8-3-06.)

18          Section 999. Effective date. This Act takes effect upon  
19          becoming law."